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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/724,325	11/28/2000	Kenneth H. Mollenauer	212/291	6472

7590

04/06/2004

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

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DATE MAILED: 04/06/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 11

Application Number: 09/724,325
Filing Date: November 28, 2000
Appellant(s): MOLLENAUER ET AL.

MAILED
APR 05 2004
GROUP 3700

Theodore D. Fay III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 20 January 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-30 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

4,770,164	Lach et al.	09-1988
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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-30 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lach et al.

Claim 1 recites a belt adapted to extend at least partially around the chest of a human. Lach teaches a belt or band 12 that extends at least partially around the chest of the human.

Claim 1 also recites a rotating member operatively connected to the belt to constrict the belt about the chest. Lach teaches a rotating member 72 to constrict the belt around the human.

Claim 1 also recites a friction liner adapted to be disposed between the belt and the chest of the human and “being adapted to extend substantially completely around the chest of the human”. This would appear to comprehend the shirt that the human is wearing. Broadly it would function as a friction liner because it is disposed between the belt and the chest of the human and any slippage of the belt over the chest of the human would actually slip over the shirt the human is wearing thereby providing protection for the human from the belt directly rubbing the skin of the human. The shirt would function as a friction liner at least to a certain extent. Without the shirt the belt would rub directly on the skin of the human.

Moreover, appellant’s friction liner can take the form of a vest, corset or girdle as claimed. Claims 3, 6, 9, 12, 15, 18, 21, 24, 27 and 30 recite that the liner can be a vest, corset or girdle. If the liner can comprehend a vest, corset or girdle but not a shirt where does one draw the line? It would appear if the shirt of Lach didn’t have any sleeves then Lach’s device *would* infringe. How would one know if the shirt were sleeveless, whether or not it comprehends the claims? If the patient were wearing a girdle would that comprehend the invention as claimed? Clearly appellant’s liner comprehends more than just a blank sheet of material.

However, to any extent the shirt is not viewed as a friction liner, Lach does teach the provision when necessary to include placing a thin sheet of PTFE plastic between the human and the base 34 and the contoured portions 20 and 22. Lach teaches in some circumstances it may be necessary to include a liner between the patient and the device and uses a PTFE liner to solve this problem (column 6, lines 57-61). Lach teaches that it may be necessary to include a liner near the base 34 where the patient lies against the band 12 and against the contoured portions 20 and 22 to prevent frictional engagement between the device and the human.

In use, to accommodate really large humans the right contoured portion 22 would be slid to the top of the device shown in figure 2 in track 48. This would produce a very large gap between the two contoured portions 20 and 22. The liner would have to be large enough to cover this large gap in the base 34, the belt 12 and include the contoured portions 20 and 22 when in this expanded condition. This same sheet would be used for all sized people. This device is intended for applying CPR and in emergency situations the EMTs are not going to be sizing the liner for different sized persons. The EMTs would be routinely applying the same sheet for each situation. They will not have a ready supply of different sized sheets for different sized people. When the same device is used for very small children this same liner would be placed in the device and would cover substantially more of the base 34 and the contoured portions 20 and 22 than normal. The liner may be twice the size necessary for a child. This liner would then comprehend the claimed liner to substantially completely surround the child's chest. The only difference between the claims and Lach would appear to be a matter of degree.

Regarding the claims 16-30, the added limitation that the liner is provided in addition to any clothing worn by the human, the arguments above regarding to the teaching in Lach of using the Teflon liner would apply here.

(11) *Response to Argument*

Regarding appellant's arguments that the shirt worn by the patient is not a friction liner because Lach does not mention that the shirt is a friction liner, one of ordinary skill in the art would know that the shirt would act as a friction liner. As noted above, the shirt is disposed between the belt and the chest of the human and any slippage of the belt over the chest of the human would actually slip over the shirt the human is wearing thereby providing protection for

the human from the belt directly rubbing the skin of the human. The shirt would function as a friction liner at least to a certain extent. Without the shirt the belt would rub directly on the skin of the human. Even if the shirt were made of cotton, wool or flannel because the shirt is held tight around the chest of the human any slippage of the belt would be between the belt and the shirt and not the shirt and the patient. Moreover the cotton, wool or flannel would provide some degree of protection to the skin of the human rather than the cutting action of the abrasive belt. If the belt were of such material that it grabs the shirt before it would slide over the shirt then the soft material of the flannel shirt would provide better protection than the abrasive material of the belt. While Lach may not recite that the shirt of the patient is a friction liner it would act as such at least to some degree and therefore comprehend the invention as claimed.

Appellant argues that Lach's sheet is not disposed between the patient's chest and the belt as claimed. As Lach teaches and appellant admits the friction liner is placed between the patient's back and the belt. As is known to one of ordinary skill in the art and as defined the dictionary "chest" is that portion of the thorax that is located between the neck and the abdomen of the human. The back also lies within this area and is the back of the chest. The liner would then be located between the chest of the human and the belt of the device.

Appellant also argues that the sheet is not adapted to extend substantially completely around the chest of the patient as claimed. Appellant has also modified Lach's drawing to draw a box around what appellant considers the area in which the sheet would extend. This would be a narrow interpretation for just one specific instance of the device. Appellant has failed to take into consideration that the sheet would not be limited to this one specific instance but would have to comprehend patients of different sizes. The friction liner would have to comprehend humans

of very large size as well as smaller sized patients including children. As noted above, in emergency situations the EMT is not going to have many different sized sheets to accommodate different sized humans. The working friction liner would have to be large enough to span the two contoured portions 20 and 22 when in the most expanded arrangement. In figure 2 the contoured portion 22 slides in tracks 48 toward the top of the drawing in order to accommodate larger humans. The space between the two contoured portions 20 and 22 in figure 3 would be larger than that shown. This same liner then used for smaller humans including children would substantially wrap around the chest of the child.

Appellant is claiming “substantially completely around the chest of the human” (emphasis added). Clearly appellant does not want to be limited to completely around the chest of the human but rather something less than that. At what point less than completely around the chest would be comprehended by the claims? If the EMT uses the liner intended for very large humans and applies it to a child and the liner ends up wrapping around the child and it substantially extends around the chest will the EMT have to stop what they are doing and consider if they are infringing this claim? The EMT is not going to worry about fitting the right sized liner for the right sized person. They will be using one liner to fit all sized people. The liner would inherently overlap more of chest of small humans including children. In this situation would Lach be infringing the claims?

Lach teaches all of the structure claimed including the friction liner however, it is appellant’s assertion that in one instance the liner of Lach may not extend substantially around the chest of the patient and therefore doesn’t comprehend the claims. However in practical intended use of the Lach device things may not be so black and white. A friction liner that is

used for large person when used for small persons may extend “substantially” around the chest of the patient. This is appellant’s only difference between the claims and the prior art and this degree may not be so clear-cut when the Lach device is put in practical use. This limitation is only a matter of degree.

Regarding claims 16-30, the limitation that the friction liner is provided in addition to any clothing the patient’s wearing, the arguments above regarding Lach’s friction liner would apply.

Regarding claims 3, 6, 9, 12, 15, 18, 21, 24, 27 and 30 and the limitation that the friction liner can take the form of a belt, vest, corset, girdle, strap or band not taught by Lach. It is interesting to note that appellant argues that the shirt of the patient can’t be considered a friction liner and yet if the shirt were a vest, corset or girdle it would be. How would one know the difference? The liner of appellant’s invention can be formed into other pieces of clothing such as vests, corsets and girdles but not shirts?

Moreover, the rectangular strip of Teflon of Lach would comprehend a band and therefore comprehend these dependent claims.

Regarding claims 10-12 and 25-27, appellant argues that the friction liner of Lach is not a second belt. While it is not clear how many other forms the friction liner can take, the rectangular shaped liner of Lach when wrapped around the chest of the patient would be a strip of material in the form of a second belt of material substantially around the chest of the patient. Appellant’s liner is merely a rectangular strip of material around the chest of the patient as would the rectangular shape of material of Lach. It is not clear how the rectangular belt of material of Lach would not be a belt of material.

Art Unit: 3764

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Primary Examiner
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ddd
April 1, 2004

Conferees



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